United Nations **AT**

Administrative Tribunal

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23 July 2001

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 995

Case No. 959: FACCHIN

Against: The Secretary-General of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Mr. Kevin Haugh, Vice-President; Mr. Omer Yousif Bireedo;

Whereas, on 22 December 1999, Brigitte Facchin, a former staff member of the United Nations, filed an Application in which she requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 919, rendered by the Tribunal on 23 July 1999;

Whereas the Application contained pleas which requested the Tribunal to:

"1. Revise Judgement [No.] 919 as per the details in my letter to the [Tribunal] ..., and

2. As in the original application submitted to the [Tribunal] in January 1997 and all correspondence addressed to the [Tribunal]."

Whereas the Respondent filed his Answer on 25 February 2000;

Whereas, on 1 March 2001, the Applicant submitted an additional statement;

Whereas the facts in the case were set forth in Judgement No. 919.

Whereas the Applicant's principal contentions are:

1. The destruction of the reports by Security and Training, United Nations Office at Geneva (UNOG), which constituted the legal basis for the actions taken by the Administration against the Applicant, prevented her from rebutting the reports or properly preparing her case.

2. The Tribunal's Judgement was based on erroneous findings.

3. The Tribunal erred in finding her application time-barred.

4. The Tribunal erred in not considering the Administration's undue delay in processing her claims.

5. The President of the Tribunal may not have been objective in acting as Presiding Officer in her case.

Whereas the Respondent's principal contention is:

The application for revision fails to introduce any fact of a decisive nature which was unknown to the Tribunal and also to the Applicant at the time of the judgement.

The Tribunal, having deliberated from 27 June to 23 July 2001, now pronounces the following judgement:

I. The Applicant has filed a request for revision of Judgement No. 919, dated 23 July 1999. In Judgement No. 919, the Tribunal found the Application to be time-barred insofar as the decision not to renew the Applicant's contract was concerned and remanded the claims regarding an incident that took place on 4 July 1994 to the Joint Appeals Board (JAB).

II. Article 11 of the Statute of the Tribunal provides that an applicant may apply for a revision of a judgement on the basis of the discovery:

> "...of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement."

III. The Tribunal notes that the Applicant's principle contention is that the destruction of the reports by Security and Training, UNOG, which constituted the legal basis for the actions taken by the Administration against the Applicant, prevented her from rebutting the reports or properly preparing her case. Furthermore, she contends that Judgement No. 919 is based on erroneous findings and on incomplete and misleading statements.

IV. The points raised by the Applicant are more closely associated with the incident of 4 July 1994 than with the renewal of her contract. This is evident from the documentation provided by the Applicant regarding her authorization to attend the course on Russian Language. The Tribunal has already decided that the claims relating to that incident should be remanded back to the JAB. Thus, the Applicant may file a new application with the Tribunal on the merits after receiving the decision of the Secretary-General in that case, in accordance with the provisions of article 7 of the Statute.

V. The Applicant further contends that the Judgement was based on erroneous findings as a number of incorrect, incomplete and misleading statements were included in the fact section of the Judgement. In this regard, the Tribunal takes note of the fifth paragraph of the fact section, as follows:

> "On 10 August 1994, the Chief, Personnel Section, UNCTAD, responded to queries by the Chief, ECE, concerning the renewal of the Applicant's contract, stating that the *latter* had already been "informed ... that [the Applicant's] contract would not be extended beyond close-of-business on 15 July 1994..." (emphasis added).

The use of the term "latter" implies that the Applicant was the addressee of the memorandum. The original memorandum stated, *inter alia*, "I [the Chief, Personnel Section, UNCTAD] understand that the Director of UNOG Division of Administration has already informed you [the Chief, ECE] that [the Applicant's] contract would not be extended". Thus, it is clear that the addressee of the memorandum was the Chief, ECE, and not the Applicant. The Tribunal orders that the appropriate correction be made in the Judgement.

VI. With regard to the request that the Tribunal revise its finding that the application was time-barred insofar as the decision not to renew her contract was concerned, the Applicant makes no mention of a newly discovered fact, but requests the Tribunal to rule again on the time-bar. In the view of the Tribunal, this request cannot be considered a valid request for revision. In this connection, the Tribunal recalls its Judgement No. 894, *Mansour* (1998), paragraph II, where it has clearly stated that "[u]nder its Statute, the Tribunal's powers of revision of a judgement are strictly limited and may be exercised only upon compliance with the conditions set forth in article 11. No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation". The Statute does not provide for appeals of Tribunal judgements.

VII. Finally, the Tribunal dismisses the argument that the President of the Tribunal might have negatively influenced the outcome of the Applicant's case. The Tribunal considers it only natural that the President was unpleasantly surprised to discover a document in his office, which had been placed there by the Applicant instead of having been addressed to him through the Executive Secretary of the Tribunal. There is no reason to question the objectivity of the President presiding in the Applicant's case.

VIII. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer GABAY
President

Kevin HAUGH
Vice-President

Omer Yousif BIREEDO
Member

Geneva, 23 July 2001

Maritza STRUYVENBERG
Executive Secretary